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In The

Supreme Court of the United States

October Term, 1994

ROY ROMER, as Governor of the State of Colorado and The STATE OF COLORADO,

Petitioners,

vs.

RICHARD G. EVANS, ANGELA ROMERO, LINDA FOWLER, PAUL BROWN, PRISCILLA INKPEN, JOHN MILLER, the BOULDER VALLEY SCHOOL DISTRICT RE-2, the CITY AND COUNTY OF DENVER, the CITY OF BOULDER, the CITY OF ASPEN, and the CITY COUNCIL OF ASPEN,

Respondents.

On Writ Of Certiorari To The Supreme Court Of The State Of Colorado

BRIEF AMICI CURIAE OF THE AMERICAN FRIENDS SERVICE COMMITTEE, AMERICAN JEWISH COMMITTEE, ANTI-DEFAMATION LEAGUE, FEDERATION OF RECONSTRUCTIONIST CONGREGATIONS AND HAVUROT, INTERFAITH IMPACT FOR JUSTICE AND PEACE, THE MOST REVEREND EDMOND L. BROWNING, PRESIDING BISHOP OF THE EPISCOPAL CHURCH, RECONSTRUCTIONIST RABINNICAL ASSOCIATION, UNITARIAN UNIVERSALIST ASSOCIATION, UNITED CHURCH OF CHRIST OFFICE FOR CHURCH IN SOCIETY, AND UNITED SYNAGOGUE OF CONSERVATIVE JUDAISM IN SUPPORT OF RESPONDENTS

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SUMMARY OF ARGUMENT

I.

As evidenced by the State's brief, the purpose and effect of Amendment 2 is to endorse its proponents' religious views concerning homosexual persons.[1] Amendment 2's proponents' avowed religious belief that homosexual persons should be singled out for discrimination is not a universal religious belief and, in fact, is contrary to the religious beliefs of Respondents' Religious *Amici*. As this Court has long held, the government must remain neutral in matters of religious theory, doctrine and practice. Amendment 2 is not neutral because it encourages private discrimination in support of a particular religious belief to the detriment of contrary religious beliefs and because it obligates the State to act only in furtherance of Amendment 2's religious, discriminatory purpose. Because Amendment 2 constitutes State endorsement of one set of religious beliefs over all others, it violates the First Amendment's Establishment Clause.

II.

America's founding generation had a vision of a society in which religion would be entirely voluntary and entirely free. People of all faiths were to be welcome to openly exercise their differing religious beliefs. Thus, the religious beliefs of Amendment 2's sponsors should be accommodated where possible. Amendment 2, however, goes beyond accommodation because it constitutionalizes

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[1] Throughout this brief, the term "homosexual" and/or "gay" refers to those individuals singled out for discrimination by Amendment 2: homosexual, lesbian, and bisexual citizens.

the private biases of Amendment 2's sponsors at the expense of homosexual citizens and of Respondents' Religious *Amici*, and because it directly involves the State in furthering such religious views.

The State's argument that Amendment 2 is necessary to protect religious liberty is meritless. Existing jurisprudence, as well as the existence of the Religious Freedom Restoration Act ("RFRA") and express exemptions in some anti-discrimination laws for religiously-held beliefs, demonstrate that there is a way to protect the religious freedom of Amendment 2's sponsors without either promoting discrimination or inhibiting the religious freedom of others who do not share the views of Amendment 2's sponsors. Religious liberty for all citizens of Colorado would be hindered, not advanced, by Amendment 2.

ARGUMENT

I. AMENDMENT 2 VIOLATES THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION.

The State of Colorado admits in its brief that the purpose and effect of Amendment 2[2] is to "promote free exercise values" and to protect "core religious values." Petitioners' Brief at 45. These values, according to the State, include the right of persons "who have sincere and profound religious objections to homosexuality" to discriminate against gay persons in housing, jobs, and public accommodations. *Id.* at 44. The State and Petitioners'

[2] Amendment 2 was codified at Article II, § 30b of the Colorado Constitution.

Religious *Amici*[3] who share these religious beliefs argue that Amendment 2 is a permissible "accommodation" of these individuals' free exercise rights as well as the rights to autonomy of like-minded religious institutions. *Id.* at 43-45.

Petitioners' Religious *Amici* emphasize that according to their beliefs, "[r]eligion, at least orthodox and traditional religions, generally deny [gay persons] moral legitimacy. This places religion foursquare in [the] path" of the efforts of gay persons to protect their civil rights through enactment of anti-discrimination laws. Brief of Christian Legal Society *et al.* (hereafter "CLS") at 25. These *Amici* clearly recognize that "religious persons and religious groups – and hence free exercise and institutional autonomy – are not a mere side issue in this case." *Id.*

However, the State's admission that Amendment 2 is intended to "promote free exercise values" and to protect "core religious values" by itself implicates Amendment 2 under the Establishment Clause of the First Amendment. Whenever a State law "touches upon religion," it must be carefully scrutinized to determine if it is "permissible under the Establishment Clause." *County of Allegheny v. A.C.L.U., Greater Pittsburgh Chapter*, 492 U.S. 573, 592 (1989); *see Gillette v. United States*, 401 U.S. 437, 450 (1971).

The Establishment Clause is as important for protection of religious liberty as the Free Exercise Clause of the First Amendment. This Court has recognized that "the

[3] Petitioners' Religious *Amici* include the parties joined in the Brief *Amicus Curiae* filed herein by the Christian Legal Society.

principle that government may accommodate the free exercise of religion does not supersede the fundamental limitations imposed by the Establishment Clause," *Lee v. Weisman*, 112 S. Ct. 2649, 2655 (1992), "and that it may often not be possible to promote the former without offending the latter." *Committee for Public Educ. v. Nyquist*, 413 U.S. 756, 788 (1973). Among the limitations on religious accommodation which the Establishment Clause imposes is that "government may not promote or affiliate itself with any religious doctrine or organization[.]" *Allegheny County*, 492 U.S. at 590.

Neither the State nor Petitioners' Religious *Amici*, in their respective Briefs, make any attempt to demonstrate that Amendment 2 conforms to the Establishment Clause's limitations. However, Respondents' Religious *Amici* here contend that Amendment 2, both in its purpose and effect, amounts to an impermissible State endorsement of the religious beliefs and practices of the Amendment's proponents and discriminates against the opposing religious beliefs of others, including Respondents' Religious *Amici*. Also, Amendment 2's authorization of discrimination in aid of its proponents' proselytizing mission aimed at gay individuals – however unlikely to succeed – constitutes indirect coercion to adhere to a particular religious belief.

For these reasons, Amendment 2's religious purpose and effect exceed the permissible boundaries of State accommodation under the Free Exercise Clause and constitute an infringement on the religious liberty protected by the Establishment Clause.[4] Accordingly, the "religious

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[4] The Respondents in this case (Plaintiffs in the trial court) challenged Amendment 2 on several grounds including "that it violates the constitutional prohibition against establishment of religion." *Evans v. Romer*, 854 P.2d 1270, 1272 n.2 (Colo.), *cert. denied*, 114 S. Ct. 419 (1993) ("*Evans v. Romer I*").

In holding that Amendment 2 "is not the least restrictive means of ensuring religious liberty, and is not narrowly tailored to serve the compelling governmental interest in ensuring the free exercise of religion," *Evans v. Romer*, 882 P.2d 1335, 1343 (Colo. 1994), *cert. granted*, 115 S. Ct. 1092 (1995) ("*Evans v. Romer II*"), the Colorado Supreme Court applied the same "strict scrutiny" analysis required for "denominational preferences" under the Establishment Clause. *See Larson v. Valente*, 456 U.S. 228, 246 (1982).

Respondents' Religious *Amici* submit that in addition to, and independent of, the Equal Protection issues before this Court, this Court can and should affirm the Colorado Supreme Court's decision on Establishment Clause grounds.

values" relied on by the State to justify Amendment 2 cannot serve as a legitimate State interest to uphold its constitutionality.

A. Amendment 2's Purpose And Effect Are To Endorse A Particular Religious Belief Concerning Homosexuality, Thereby Excluding Gay Persons And Religious Dissenters From The Political Community. Such Endorsement Violates The Establishment Clause.

> In proscribing all laws "respecting an establishment of religion," the Constitution prohibits, at the very least, legislation that constitutes an endorsement of one or another set of religious beliefs . . . . It is part of our settled jurisprudence that "the Establishment Clause prohibits government from abandoning secular purposes in order to put an imprimatur on one religion . . . or to favor the adherents of any sect or religious organization."

Texas Monthly, Inc. v. Bullock, 489 U.S. 1, 8-9 (1989) (plurality opinion) (quoting *Gillette v. United States*, 401 U.S. at 450); cited with approval in *Allegheny County*, 492 U.S. at 593.

In *Epperson v. Arkansas*, 393 U.S. 97 (1968), this Court set forth the doctrine of neutrality with respect to religion and religious belief required by the Establishment Clause:

> Government in our democracy, state and national, *must be neutral in matters of religious theory, doctrine, and practice.* It may not be hostile to any religion or to the advocacy of no religion; *and it may not aid, foster or promote one religion or religious theory against another or even against the militant opposite.*

Id. at 103-04 (emphasis added); *accord Allegheny County*, 492 U.S. at 590; *Abington School District v. Schempp*, 374 U.S. 203, 222 (1963) (neutrality prohibits placing official support behind "the tenets of one or of all orthodoxies").[5]

In this case, the State admits that Amendment 2 is motivated by the religious views on homosexuality of the Amendment's proponents. The primary proponent of Amendment 2, Colorado for Family Values (CFV), sought passage of the Amendment for the expressed purpose of permitting those who share CFV's religious objections to

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[5] Moreover, this Court has made it clear that the Free Exercise Clause's prohibition against State action which denies "the rights of free exercise to *anyone* . . . has never meant that a majority could use the machinery of the State to practice its beliefs," *Schempp*, 374 U.S. at 226, or "to enforce a religious orthodoxy." *Lee v. Weisman*, 112 S. Ct. at 2658.

homosexuality to engage in unrestricted discrimination against homosexual persons.[6]

CFV conceived of the alleged need for and drafted the language of Amendment 2. CFV also managed the campaign which ultimately resulted in passage of Amendment 2 (v. 16, pp. 874, 1045-46). CFV's position papers on Amendment 2 state its religious basis for promoting passage of that Amendment: "Gay behavior is what the Bible calls 'sin' because sin defines any attempt to solve human problems or meet human needs without regard to God's wisdom and solutions as found in Scripture and in His saving grace and mercy." (Pl. Ex. 12 at 67; v. 3, p. 56.)[7]

In *Schempp*, this Court articulated two of the three tests which were later summarized in *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971):[8]

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[6] The religious goals of the proponents of legislation are relevant in determining whether the contested measure has a religious purpose and/or effect which violates the Establishment Clause. *See Edwards v. Aguillard*, 482 U.S. 578, 591-93, 601-02 (1987); *Wallace v. Jaffree*, 472 U.S. 38, 56-57, 74-76 (1985) (history of a law is a factor in determining whether its purpose and effect are religious); *Epperson v. Arkansas*, 393 U.S. at 108, n.16-17 (1968) (advertisement by proponents for statute adopted by popular initiative cited as evidence of the law's religious purpose); SUTHERLAND, STAT. CONST. § 48.19 (5th ed.).

[7] *See* Statement of Interest of the Lutheran Church-Missouri Synod: "God's Word clearly identifies homophile behavior as immoral, and condemns it. . . . " Brief of CLS at App. 4.

[8] Under the *Lemon* analysis, "a statute or practice which touches upon religion, if it is to be permissible under the Establishment Clause, must have a secular purpose; it must neither advance nor inhibit religion in its principal or primary effect; and it must not foster an excessive entanglement with religion." *Allegheny County*, 492 U.S. at 592.

> The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion, then the enactment exceeds the scope of legislative power as circumscribed by the Constitution.

374 U.S. at 222; *accord Epperson v. Arkansas*, 393 U.S. at 107.

In *Allegheny County*, this Court noted that decisions subsequent to *Lemon* had "refined the definition of governmental action that unconstitutionally advances religion" by paying "[p]articularly close attention to whether the challenged governmental practice either has the purpose or effect of 'endorsing' religion." *Allegheny County*, 492 U.S. at 592. A majority of this Court in *Allegheny County* further emphasized that:

> The prohibition against governmental endorsement of religion "preclude[s] government from conveying or attempting to convey a message that religion or a particular religious belief is *favored or preferred*."

Id. at 593 (emphasis in original) (quoting *Wallace v. Jaffree*, 472 U.S. 38, 70) (O'Connor, J., concurring).

Of particular relevance to this case, this Court summarized the "essential principle" expressed in its use of key words such as "endorsement," "favoritism," or "promotion":

> The Establishment Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief or from "making adherence to a religion relevant in any way to a person's standing in the political community."

Allegheny County, 492 U.S. at 593-94 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 687 (1984) (O'Connor, J., concurring); *accord Texas Monthly, Inc. v. Bullock*, 489 U.S. at 9 (plurality opinion); *Wallace v. Jaffree*, 472 U.S. at 69 (O'Connor, J., concurring).[9]

The admitted religious purpose of Amendment 2, to facilitate the ability of individuals and organizations with religious objections to homosexuality to enforce their beliefs throughout Colorado society and in State governmental operations, clearly constitutes an "appearance" that the State has taken a position on this question of religious belief.[10]

It is equally certain that if Amendment 2 is enforced, it will have the primary effect intended by its

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[9] Justice O'Connor, in her concurring opinion in *Lynch*, explained one of the reasons for this principle: "Endorsement [of religion] sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community." *Lynch v. Donnelly*, 465 U.S. at 688.

[10] The purpose test of *Lemon* does not require that a State law have exclusively secular objectives. However, the secular purposes proffered by the State must be sincere, not shams. *Wallace v. Jaffree*, 472 U.S. at 64; *see Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 113 S. Ct. 2217, 2226-29 (1993). This Brief does not address the validity of the secular purposes alleged by the State to justify Amendment 2's discriminatory purpose. If none of them are valid, then Amendment 2's religious purpose fails the first prong of the *Lemon* test. If this Court finds a valid secular as well as religious purpose behind Amendment 2, it must still determine whether its effect is to endorse religion. *Allegheny County*, 492 U.S. at 592.

"pervasively sectarian" proponents.[11] *See Bowen v. Kendrick*, 487 U.S. 589, 609-10 (1988). Amendment 2's conscious employment of a prohibition against protecting gay citizens from discrimination, as a means of facilitating the Amendment's proponents' religious purpose, creates the "appearance of a joint exercise of legislative authority by Church and State [which] provides a significant symbolic benefit to religion in the minds of some by reason of the power conferred." *Larkin v. Grendel's Den, Inc.*, 459 U.S. 116, 125-26 (1982). Under such circumstances, Amendment 2 "can be seen as having a 'primary' and 'principal' effect of advancing religion." *Id.* at 126.

Additionally, by creating a constitutionally protected right to discriminate against them, Amendment 2 subjects gay persons to second class citizenship in Colorado society. Because they do not adhere to CFV's religious beliefs on homosexuality, Colorado's gay residents face discrimination in housing, jobs or public accommodations and are precluded by Amendment 2 from seeking any form of protection from any branch or level of state government.

Thus, the second aspect of the essential principles behind the "endorsement" test under the Establishment Clause, "making adherence to a religion relevant in any way to a person's standing in the political community," is also compromised by Amendment 2. *Allegheny County*,

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[11] At a church discussion on Amendment 2 prior to its passage Kevin Tebedo, the co-founder of CFV, asserted that Amendment 2 is "about authority. It's about whose authority takes precedence in the society in which we live. Is it the authority of man . . . or is it the authority of God?" (v. 16, pp. 1060, 1061-62.)

492 U.S. at 593-94 (quoting *Lynch v. Donnelly*, 465 U.S. at 687).[12]

Finally, by siding with its proponents' religious view on homosexuality, Amendment 2 discriminates against other, equally sincere and profound religious beliefs, including those of Respondent's Religious *Amici*,[13] which oppose discrimination against gay citizens. Justice Scalia, writing for the majority in *Employment Division v. Smith*, 494 U.S. 872, 877 (1990), recognized that under the First Amendment Religion Clauses, "[t]he government may not . . . lend its power to one or the other side in controversies over religious . . . dogma." As this Court stated unequivocally in *Allegheny County*:

> The antidiscrimination principle inherent in the Establishment Clause necessarily means that would-be discriminators on the basis of religion cannot prevail.

492 U.S. at 611. Contrary to the State's assertions on this issue, instead of promoting and protecting religious liberty, Amendment 2 has the opposite impact.

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[12] By CFV's definition, homosexual individuals are "sinners" whose beliefs are at odds with those religions, such as Petitioners' Religious *Amici's*, which "generally deny them moral legitimacy." Brief of CLS at 25. Though many gay persons may be practicing Christians or adherents to other religious disciplines, as well as participants in religious organizations which do not share CFV's interpretation of religious scripture, unless they conform to CFV's religious views, they are "non-adherents" of the religious beliefs favored by Amendment 2.

[13] *See* Respondents' Religious *Amici's* Statements of Interest at Appendix.

As this Court eloquently articulated in *Lee v. Weisman*:

> The explanation lies in the lessons of history that was and is the inspiration for the Establishment Clause, the lesson that in the hands of government what might begin as a tolerant expression of religious views may end in a policy to indoctrinate and coerce. A state-created orthodoxy puts at grave risk that freedom of belief and conscience which are the sole assurance that religious faith is real, not imposed.

112 S. Ct. at 2658. By endorsing, through Amendment 2, a particular religious belief on homosexuality, "the State disavows its own duty to guard and respect that sphere of inviolable conscience and belief which is the mark of a free people." *Id.*

Therefore, because Amendment 2's primary purpose and effect are to endorse a particular religious belief, because it makes adherence to that belief relevant to the standing of gay citizens in the Colorado political community, and because it discriminates against opposing religious beliefs, Amendment 2 violates the Establishment Clause.

B. Amendment 2 Also Violates The Establishment Clause By Attempting to Use Coercive State Powers To Discriminate Against Gay Citizens In Aid Of Particular Religious Beliefs.

The Establishment Clause also forbids the State from using its power or prestige to either directly or indirectly pressure or coerce a person to conform to the prevailing, officially approved religious doctrine. *Wallace v. Jaffree*, 472 U.S. at 50; *Engel v. Vitale*, 370 U.S. 421, 430-31 (1962),

Everson v. Board of Educ., 330 U.S. 1, 15 (1947); *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).

CFV's religious motives for seeking passage of Amendment 2 were not limited to protecting the private religious beliefs of individuals opposed to homosexuality. Nor were they confined to preserving the autonomy of religious organizations whose theology requires discrimination against homosexuals in the internal affairs of those organizations. CFV also sought adoption of Amendment 2 to accomplish its main objective: to proselytize its belief that homosexuality can be "cured" through religious "conversion" to heterosexual orientation.[14] (Pl. Ex. 12 at 67-68.)

In CFV's view, civil rights protections for gay citizens inhibit CFV's ability to religiously assist them to convert to heterosexuality "through the power of Christ." (Pl. Ex. 12 at 68.) Amendment 2, by prohibiting state protection for gay citizens against discrimination, removes this crucial "impediment" to CFV's proselytizing activities.

It cannot seriously be contended that sexual orientation is freely and voluntarily changeable.[15] Accordingly,

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[14] During the campaign to pass Amendment 2, CFV Executive Board Chairman Will Perkins sent a letter to 4,000 Colorado pastors enlisting their help and the help of their congregations in passing Amendment 2. In his letter, Perkins asserted that CFV's leadership on Amendment 2 was aimed at stopping gay citizens' efforts to protect themselves from discrimination through civil rights legislation so that "churches" could continue "to minister to homosexuals as persons living in sin with Christ as the Source of forgiveness and the Restorer of hope for relationship with God." (v. 15, pp. 758-59.)

[15] See testimony of Respondents' experts (v. 6, p. 94; v. 13, pp. 272-73, 383; v. 14, p. 469). It is conceivable, however, that

the attempt to coerce homosexual individuals into becoming heterosexuals through a state policy which protects and promotes discrimination against homosexual individuals is grossly perverse. More importantly, the Constitution prohibits the enforcement of a law which was drafted and promoted to aid in such sectarian "pressure" whether or not ultimately successful in the application. *See Westside Community Schools v. Mergens*, 496 U.S. 226, 261 (1990) (Kennedy, J., concurring). The primary effect of such a law would be for gay citizens to experience discrimination because of their non-conformance with CFV's religious beliefs.

Such coercive pressure, whether or not successful, violates the principle that the government cannot "impose special disabilities on the basis of religious views or religious status." *Employment Div. v. Smith*, 494 U.S. at 877. In his famous "Memorial and Remonstrance Against Religious Assessments," James Madison articulated the reasons for his objections to a Virginia law which would have imposed a tax to support teachers of Christianity. Madison stated that laws establishing religion:

> degrade from the equal rank of Citizens all those whose opinions in Religion do not bend to those of the Legislative authority. Distant as it may be . . . from the Inquisition it differs from it only in degree. The one is the first step, the other the last in the career of intolerance.

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some individuals will appear to religiously renounce their homosexuality to avoid the punishing discrimination they would otherwise experience.

quoted in *Engel*, 370 U.S. at 432 n.16. Amendment 2 violates the core Establishment Clause principle that government:

> may not place its prestige, coercive authority, or resources behind a single religious faith or behind religious belief in general, compelling nonadherents to support the practices or proselytizing of favored religious organizations and conveying the message that those who do not contribute gladly are less than full members of the community.

Texas Monthly, Inc., 489 U.S. at 9 (plurality opinion).

This principle, of prohibiting government sponsored compulsion in the area of freedom of conscience and religion, is fortified by "the teaching of history," both preceding and subsequent to the adoption of the Bill of Rights. *Wallace v. Jaffree*, 472 U.S. at 54 n.39. As Justice Jackson explained in *West Virginia State Board of Education v. Barnette*:

> Struggles to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good as well as by evil men. Nationalism is a relatively recent phenomenon, but at other times and places the ends have been racial or territorial security, support of a dynasty or regime, *and particular plans for saving souls*. As first and moderate methods to attain unity have failed, those bent on its accomplishment must resort to an ever increasing severity. As governmental pressure towards unity becomes greater, so strife becomes more bitter as to whose unity it shall be. . . . Ultimate futility of such attempts to compel coherence is the lesson of every such

effort from the Roman drive to stamp out Christianity as a disturber of its pagan unity, the Inquisition, as a means to religious and dynastic unity, the Siberian exiles as a means to Russian unity, down to the fast failing efforts of our present totalitarian enemies. . . . [16]

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[16] This year, as America and the other countries involved in World War II struggle to comprehend the lessons of that era and the Nazi Holocaust which defined it, CFV, in its April 1995 Newsletter, has contributed a piece of revisionist history. In its lead article, "The Pink Swastika," CFV propagates the perspective that "Homosexuality actually played a key role in the psychology of Nazi brutality. In fact, 'macho' homosexuality inspired the ruthlessness of the entire regime." CFV Report: The Voice of Amendment 2, Volume 27, page 1, April 1995.

CFV's use of a classic revisionist technique – literally blaming the victims for their own persecution – is consistent with CFV's attempt to demonize and dehumanize gay people in an effort to justify Amendment 2's unbridled discrimination against them. *See generally*, Pl. Ex. 12 at 8-30, 46-47. For a discussion on the use of similar stereotypes in racist theory, *see generally* GEORGE L. MOSSE, NATIONALISM AND SEXUALITY (1985); GEORGE L. MOSSE, TOWARD THE FINAL SOLUTION: A HISTORY OF EUROPEAN RACISM (1985 ed.).

CFV's article deliberately distorts responsible historical research which reveals Hitler's "bloody purge" of homosexual individuals in the SA storm troopers, the Nazis' official policy and campaign against homosexual individuals, the convictions of 50,000 gay people under anti-homosexual laws during the Nazi-era, and the harsh treatment of gay individuals in Nazi concentration camps, including attempts to forcibly "cure" homosexual persons of their sexual orientation. *See* HEINZ HEGLER, THE MEN WITH THE PINK TRIANGLE (1980); Warren Johansson & William A. Percy, *Homosexuals in Germany*, 7 SIMON WIESENTHAL CENTER ANNUAL (1990); Ruediger Lautmann, *Gay Prisoners in Concentration Camps as Compared with Jehovah's Witnesses and Political Prisoners, in* A MOSAIC OF VICTIMS: NON-JEWS PERSECUTED AND MURDERED BY THE NAZIS (Michael Berenbaum ed., 1990); FRANK RECTOR, THE NAZI EXTERMINATION OF HOMOSEXUALS (1981).

It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings.

319 U.S. 624, 640-41 (1943) (emphasis added) (*quoted in substantial part in Wallace v. Jaffree*, 472 U.S. at 54 n.39).

The coercive nature of Amendment 2 conflicts with these historical lessons underlying the religious liberty protected by the First Amendment. Because of its coercive nature, Amendment 2 violates the Establishment Clause.

II. THE FREE EXERCISE OF RELIGION CANNOT BE GUARANTEED BY A LAW THAT ITSELF ESTABLISHES RELIGION.

It is clear that what the sponsors and supporters of Amendment 2 seek is the elimination of any compromise between their religious views and any other interest, including the religious beliefs of others. The Christian Legal Society's statement of interest set forth in their brief *amicus curiae* is revealing on this point:

> Because the source of religious liberty . . . is the Creator, not a constitutional amendment, statute or executive order, *it is not merely one of many policy interests to be weighed against others* . . . . Hence, the unequivocal and non-negotiable prohibition attached to this, our First Freedom, is "Congress shall make no law . . . . "

CLS Brief at App. 2 (emphasis added).

The State and its Religious *Amici* therefore ask this Court to permanently tip the balance in favor of the

sponsors' religious views so that no other interest can possibly outweigh those views: "the compelling government interest in protecting [our] religious liberty *justifies any burden* Amendment 2 imposes upon [homosexual individuals]." *Id.* at 2 n.2 (emphasis added); *see also id.* at 26 (same). The State and its Religious *Amici* ignore the fact that other constitutionally protected religious views are at odds with the views promoted by Amendment 2. This endorsement of one set of religious beliefs over others is precisely contrary to what the Framers contemplated when drafting the First Amendment.

A. Amendment 2 Exceeds The Permissible Scope Of State Accommodation.

The proponents of Amendment 2 seek to justify the need for Amendment 2 on the basis of perceived difficulties with hypothetical free exercise claims that they believe they would have to assert in order to avoid Colorado's existing anti-discrimination laws and policies. The issue before this Court, however, is not whether any of Colorado's statutes, ordinances or policies which prohibit discrimination on the basis of sexual orientation violate religious freedom as protected by the Free Exercise Clause of the First Amendment. That issue must await an actual case or controversy before it can properly be adjudicated.

The issue here is whether Amendment 2, by withdrawing all of Colorado's authority to protect gay citizens from discrimination in all walks of life – public, private, secular and sectarian – exceeds the permissible scope of State accommodation of free exercise of religion and thereby violates the Establishment Clause.

" 'The First Amendment . . . gives no one the right to insist that in pursuit of their own interests others must conform their conduct to his own religious necessities.' " *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 710 (1985) (quoting Judge Learned Hand *in Otten v. Baltimore & Ohio R. Co.*, 205 F.2d 58, 61 (2d Cir. 1953)).

Thus, Amendment 2, which not only "exempts" its religious proponents from having to comply with anti-discrimination laws but also repeals all such anti-discrimination laws to the extent they protect gay people, imposes substantial burdens on gay persons and on those with contrary religious views. Amendment 2 exposes gay people to discrimination from anyone, not just those with religious motives, and requires the State to act only in furtherance of Amendment 2's discriminatory purposes. *See Yenter v. Baker*, 248 P.2d 311, 314 (Colo. 1952). Because Amendment 2 allows the imposition of substantial burdens, especially upon gay citizens, in furtherance of its proponents' avowed religious beliefs, it exceeds the limits of permissible accommodation. *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 18 n.8 (1989).

"[T]he State has no legitimate interest in protecting any and all religions from views distasteful to them. . . ." *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 505 (1952) (*quoted with approval in Epperson v. Arkansas*, 393 U.S. 97, 107 (1968)). While CFV's and Petitioners' Religious *Amici*'s religious belief that homosexual orientation is objectionable is protected by the Free Exercise Clause, they cannot employ the authority of the State of Colorado to carry out that belief.

Furthermore, this Court has never "interpreted the First Amendment to require the government *itself* to behave in ways that the individual believes will further his or her spiritual development or that of his or her family. The Free

Exercise Clause simply cannot be understood to require the Government to conduct its own internal affairs in ways that comport with the religious beliefs of particular citizens." *Bowen v. Roy*, 476 U.S. 693, 699 (1986) (emphasis in original); *accord Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 449 (1988). Amendment 2 would repeal numerous laws and regulations of the State of Colorado relating solely to governmental actors and employees, to the extent such laws and regulations protect gay people from discrimination. Among them are an Executive Order of the Governor, No. D0035 (Dec. 10, 1990), prohibiting discrimination on the basis of sexual orientation in State employment practices and Canon 3(a)(9) of the Code of Judicial Conduct prohibiting judicial prejudice or bias based on sexual orientation. Clearly, in this context, Amendment 2 exceeds the permissible scope of accommodation under the Free Exercise Clause.

The State's Religious *Amici*'s espoused religious beliefs regarding the treatment of homosexual persons are not universal. For example, The Episcopal Church, also a Christian denomination, has a longstanding policy to work toward the eradication of discrimination against homosexual persons in society.[17] The other religious denominations and associations

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[17] In 1976, the General Convention of the Episcopal Church (the Church's highest policy making body) adopted the following resolutions:

> *RESOLVED*, the House of Bishops concurring, that it is the sense of this General Convention that homosexual persons are children of God who have the full and equal claim with all other persons upon the love, acceptance, and pastoral concern and care of the Church.
>
> *RESOLVED*, the House of Bishops concurring, that this General Convention expresses its conviction that homosexual persons are entitled to equal protection of the laws with all other citizens, and calls upon our society to see that such protection is provided in actuality.

CHURCH AND SOCIETY: SOCIAL POLICY OF THE EPISCOPAL CHURCH at 357.

In 1994, the General Convention reaffirmed the above resolution regarding equal protection for homosexual persons and committed the resources of the Church to work on behalf of legislation to assure such protection. General Convention 1994 (C-019s) at 60.

[18] For example, the Roman Catholic Church, while not approving homosexual acts, teaches tolerance toward those who are homosexual: homosexual persons "must be accepted with respect, compassion, and sensitivity. Every sign of unjust discrimination in their regard should be avoided." CATECHISM OF THE CATHOLIC CHURCH at 625-26 (Doubleday 1994). Still other religions have adopted resolutions opposing discrimination against homosexual persons and exhorting adherents to work for the enactment of legislation that would guarantee the liberties of all persons without discrimination related to sexual orientation. *See, e.g.*, Tenth General Synod, United Church of Christ, Resolution 6 (1975). Thus, CFV and the other sponsors of Amendment 2 cannot and do not speak for all religions on the issue of homosexuality.

comprising Respondents' Religious *Amici* espouse similar policies against discrimination. *See, e.g.*, Appendix (Respondents' Amici's Statements of Interest). Amendment 2, while it may serve the self-defined ends of CFV and its other sponsors, is contrary to, and undermines, the beliefs of other Christian and non-Christian religions,[18] and the beliefs of Respondents' Religious *Amici*.

The method employed by Amendment 2 to accommodate religious beliefs, namely, discrimination against gay individuals not restricted to the sectarian sphere, is not a legitimate governmental interest. "The Constitution cannot

control such prejudices but neither can it tolerate them. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect." *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984); *see also Norwood v. Harrison*, 413 U.S. 455, 469-70 (1973) ("[A]lthough the Constitution does not proscribe private bias, it places no value on discrimination as it does on the values inherent in the Free Exercise Clause.")

As this Court said in *Allegheny County*:

> To be sure, in a pluralistic society there may be some would-be theocrats, who wish that their religion were an established creed, and some of them perhaps may be even audacious enough to claim that the lack of established religion discriminates against their preferences. But this claim gets no relief, for it contradicts the fundamental premise of the Establishment Clause itself. *The anti-discrimination principle inherent in the Establishment Clause necessarily means that would-be discriminators on the basis of religion cannot prevail.*

492 U.S. 573, 611 (1989) (emphasis added); *cf. Bob Jones Univ. v. United States*, 461 U.S. 574, 602-04 (1983) (denial of tax exempt status to schools that engage in racial discrimination on the basis of sincerely held religious beliefs does not violate Free Exercise Clause).

B. Amendment 2 Is Not A Neutral Law In That It Encourages Discrimination.

The State contends that because Amendment 2 does not *require* discrimination against homosexual citizens, it is not discriminatory, but rather is neutral. Petitioners' Brief at 48. However, Amendment 2 does encourage discrimination because it would open the door to discrimination against homosexual citizens by anyone for any reason or for no

reason. It *prohibits* Colorado (and its courts) from taking any action to defend homosexual citizens against discrimination and, as a self-executing initiative, limits Colorado to undertaking only those future actions which would *further* the discriminatory purpose of Amendment 2.

As the Colorado Supreme Court stated in *Yenter v. Baker*, a self-executing law is:

> beyond the power of the legislature to render it nugatory by passing restrictive laws. . . . "Only such legislation is permissible as is in furtherance of the purpose, or as will facilitate the enforcement, of such provision, and legislation which will impair, limit or destroy rights granted by the provision is not permissible."

248 P.2d at 314 (quoting *Baker v. Bosworth*, 222 P.2d 416, 418 (Colo. 1950)). Accordingly, Amendment 2 locks the State of Colorado into a posture of promoting prospective discrimination.

Thus, Amendment 2, contrary to the State's claim of neutrality, is far from neutral in that it supports and encourages discrimination both by private individuals and by the State. *See Citizens for Responsible Behavior v. Superior Court*, 2 Cal. Rptr. 2d 648, 658 (Cal. Ct. App. 1991). This Court addressed the seeming "neutrality" of a similar State constitutional amendment in *Reitman v. Mulkey*, 387 U.S. 369 (1967). There, the Court invalidated a California constitutional amendment (known as § 26), passed by ballot initiative, which had the effect of repealing existing laws prohibiting racial discrimination in housing.[19]

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[19] Section 26 provided, in part, that:
Neither the State nor any subdivision or agency thereof shall deny, limit or abridge, directly or

Although the anti-discrimination laws at issue in *Reitman* addressed racial discrimination, the Court's test of the subject law's neutrality, or lack thereof, is unaffected by the form of discrimination at issue. The Court found that the initiative was discriminatory, despite the fact that it did not, by its own terms, *require* discrimination. By overturning existing State laws protecting citizens against discrimination, the initiative had changed the situation from one in which discriminatory practices were restricted to one where they were affirmatively encouraged:

> The right to discriminate, including the right to discriminate on racial grounds, was now embodied in the State's basic charter, immune from legislative, executive, or judicial regulation at any level of the state government. Those practicing racial discriminations need no longer rely solely on their personal choice. They could now invoke express constitutional authority, free from censure or interference of any kind from official sources.

Id. at 377.

Unlike Amendment 2, § 26 specifically exempted the State from its purview. Even with such an exemption, the Court found that § 26 impermissibly co-opted the State into a position of encouraging discrimination. *Id. A fortiori*, Amendment 2, which does not exempt the State of Colorado from its purview but rather mandates that the State act to further

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> indirectly, the right of any person, who is willing or desires to sell, lease or rent any part or all of his real property, to decline to sell, lease or rent such property to such person or persons as he, in his absolute discretion, chooses.

Reitman, 387 U.S. at 371 n.2 (setting forth the full text of § 26).

the purposes of the amendment, must certainly fail the neutrality analysis.

Amendment 2 does not simply attempt to defend a particular group's religious beliefs. Instead, it creates a special right for that group (and anyone else) to discriminate against another targeted group of citizens they do not like. By making unavailable to gay citizens the means of redress available to all other vicitms of discrimination, a uniquely protected category would be created for discrimination against gay citizens in both the private and government sectors of society.

The State and its Religious *Amici* assert that such a right is necessary for religious reasons and that Amendment 2 should be respected because it is the will of the people. Petitioners' Brief at 14. As Justice Douglas reiterated in *Reitman*:

> Wherever the real power in a Government lies, there is the danger of oppression. In our Governments the real power lies in the majority of the Community, and the invasion of private rights is *chiefly* to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the major number of the Constituents. This is a truth of great importance, but not yet sufficiently attended to . . . .

387 U.S. at 387 (1966) (Douglas, J., concurring) (quoting 5 WRITINGS OF JAMES MADISON 272 (Hunt ed., 1904) (emphasis in original)).

Allowing for the enactment of anti-discrimination laws while providing for limited exemptions for religious beliefs would certainly constitute a more neutral arrangement than

Amendment 2 would create.[20] As the Colorado Supreme Court noted in its ruling, the State did not argue that the Denver ordinance, which contains an exemption for religiously-based objections, impairs religious freedom. *Evans v. Romer II*, 882 P.2d 1335, 1343 (Colo. 1994). In fact, the State's own expert witness testified that imposing a religiously-based exemption on all such anti-discrimination laws would be less restrictive than Amendment 2 and would adequately address any concerns about religious liberty. *Id.* This Court, in *Corporation of the Presiding Bishop v. Amos*, 483 U.S. 327 (1987), has already recognized the value of religiously-based exemptions in protecting religious liberty under federal anti-discrimination laws. *Id.* at 339.

The State's "winner take all" approach to religious liberty is not neutral and cannot long exist in a democracy as diverse as ours without straining it to the point of breaking. A law that is truly neutral would be one that accommodates conflicting religious beliefs with minimal harm to the rights of other members of society.

C. The Religious Freedom Restoration Act Preserves Religious Liberty By Balancing Free Exercise Against The Competing Needs Of Secular Society.

In 1993, Congress codified the standards established in *Sherbert v. Verner*, 374 U.S. 398 (1963), and *Wisconsin v. Yoder*,

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[20] Respondents' Religious *Amici* recognize that the issue of religiously-based exemptions is not before the Court, but simply point out that Amendment 2, because it disallows any anti-discrimination laws as they apply to gay citizens, would have a much broader discriminatory effect than would allowing for religiously-based exemptions.

406 U.S. 205 (1972), by enacting the Religious Freedom Restoration Act of 1993. 42 U.S.C. §§ 2000bb to 2000bb-4 (Supp. 1994). Under the RFRA test, government must justify any substantial burden on religiously motivated conduct by a compelling state interest and by means narrowly tailored to achieve that interest.[21]

RFRA was intended to protect the religious liberty of all citizens without imposing any one group's religious beliefs on others or requiring the State to support or advance any particular religious views.

RFRA renders meritless the State's argument that Amendment 2 is necessary to protect religious liberty. RFRA, as well as existing jurisprudence and express exemptions set forth in some of the targeted anti-discrimination laws, already provides the necessary protection. RFRA allows the supporters of Amendment 2 to seek an exemption from any of the anti-discrimination laws targeted by the amendment based upon their religiously-held belief against homosexuality.

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[21] Section 3 of RFRA provides as follows:

(a) IN GENERAL – Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section.

(b) EXCEPTION – Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person –

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. §§ 2000bb-1(a), 1(b) (Supp. 1994).

The impact of RFRA on this Court's holding in *Employment Division v. Smith*, 494 U.S. 872 (1990), that the free exercise analysis of *Sherbert* may not be applicable to neutral laws of general applicability, has yet to be fully determined. Since the enactment of RFRA, however, the vast majority of cases dealing with free exercise claims have been determined by applying the balancing test as set forth in RFRA.[22] It is also important to note, even though the issue is not directly before the Court today, that regardless of whether a court hearing a challenge to one of the anti-discrimination laws targeted by Amendment 2 applies the RFRA/*Sherbert* balancing test or relies upon this Court's ruling in *Smith*, the most favorable ruling the challenger could receive would be for the court to hold that the challenger is exempted from compliance with the subject ordinance.[23]

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[22] *See, e.g., Bessard v. California Community Colleges*, 867 F. Supp. 1454 (E.D. Cal. 1994) (forcing plaintiffs to choose between being denied employment or taking a statutory loyalty oath in violation of their religious beliefs imposed a substantial burden on the plaintiffs' exercise of their religion and such oath was not the least restrictive means of furthering a compelling state interest). *Allah v. Beyer*, 1994 WL 549614 (D.N.J. Mar. 29, 1994) (unpublished opinion) (transfer of an inmate to a prison where he would not be able to share religious experiences with co-religionists constituted a substantial burden on the inmate's exercise of his religion, but such transfer constituted the least restrictive means available to prison administrators to accomplish the compelling state interest of maintaining institutional security and order). Only one federal district court has held RFRA to be unconstitutional, arguing that Congress violated the doctrine of Separation of Powers by intruding on the power and duty of the judiciary. *Flores v. City of Boerne*, 877 F. Supp. 355 (W.D. Tex. 1995), *appeal docketed*, Nos. 50306 & 50308 (5th Cir. May 11, 1995).

[23] Respondents' Religious *Amici* are not necessarily endorsing such a ruling but simply note that the possibility for such a ruling exists.

Unlike Amendment 2, RFRA also recognizes that the protection of free exercise of religion cannot exceed the limits of the Establishment Clause. Section 7 of RFRA reads, in part, as follows:

> Nothing in this Chapter shall be construed to affect, interpret, or in any way address that portion of the First Amendment prohibiting laws respecting the establishment of religion.

42 U.S.C. § 2000bb-4 (Supp. 1994). The sponsors of RFRA, unlike the sponsors of Amendment 2, recognized that the Establishment Clause is essential to preserve religious liberty for all citizens, rather than just a chosen few.

Amendment 2, if upheld, would preclude the judicial scrutiny of religious motives and competing State interests that free exercise challenges under RFRA would require. Further, Amendment 2 would fail to provide the Establishment Clause protections of RFRA. Rather than protecting free exercise, Amendment 2 would endanger the religious liberty of all citizens.

CONCLUSION

The Free Exercise Clause alone cannot sufficiently safeguard religious liberty. The Establishment Clause also plays a central role in guaranteeing such freedom by forbidding official actions that signify state endorsement or exclusion based on an individual's religious beliefs. If, as the proponents of Amendment 2 contend, it is religiously necessary for them to discriminate against homosexuals, then they may seek a religious exemption from non-discrimination laws. *See, e.g.*, RFRA. The State may not, however, without running afoul of the Establishment Clause, give selected religious

beliefs the force of law. To allow such a law threatens the religious liberties of those with contrary religious views, as well as the liberties of all Americans. As this Court stated in *West Virginia Board of Education v. Barnette*:

> [W]e apply the limitations of the Constitution with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization. . . . [F]reedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

319 U.S. 624, 641-42 (1943).

Therefore, for the foregoing reasons, the Court should affirm the ruling of the Colorado Supreme Court that Amendment 2 is unconstitutional.

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STATEMENTS OF INTEREST

The **AMERICAN FRIENDS SERVICE COMMITTEE** ("AFSC") is an institutional expression of the principles of the Religious Society of Friends (Quakers). AFSC's belief in the sanctity and worth of each human being calls it to engage in a struggle – though never a war, for no person is our enemy – for greater justice for all people, greater inclusiveness in communities and institutions. The AFSC has a long history of action against discrimination, whether based on race, gender, disability, religion, national origin or legal status. Over the past two decades, AFSC has also come to understand the need to work toward removing practices of discrimination against lesbian, gay and bisexual persons. As part of that struggle AFSC supports legal protections against discrimination in employment and employment related benefits, housing, public accommodations, education and other areas of life, including domestic partnerships.

The AFSC has affirmed its respect and loving concern for its lesbian, gay and bisexual committee and staff members. It has initiated actions to implement this concern through staffing policies and program activities designed to raise awareness in the larger community of the problems of discrimination based on sexual orientation, recognizing that such discrimination harms both its direct victims and the community as a whole.

The **AMERICAN JEWISH COMMITTEE** ("AJC") is a national membership organization founded in 1906, a time of pogroms in Europe and rising anti-Semitism in America, to protect the civil and religious rights of Jews. The AJC has chapters throughout the United States,

including Colorado. The AJC believes that civil and religious rights can be made secure for Jews only if the rights of all Americans are equally secure. Therefore, AJC has been actively involved since the early 1930s in the cause of civil rights.

As an extension of AJC's firm opposition to invidious discrimination based on race, religion, sex, and national origin, AJC is also opposed to discrimination based on sexual orientation in employment, housing, education and public accommodations.

The **ANTI-DEFAMATION LEAGUE** ("ADL") is one of the oldest civil rights organizations in the United States. It was founded in 1913 to combat anti-Semitism and to promote good will among all races, ethnic groups, and religions. As set forth in its charter, ADL's "ultimate purpose is to secure justice and fair treatment to all citizens alike and to put an end forever to unjust and unfair discrimination against and ridicule of any sect or body of citizens." For more than eighty years, ADL has been active in the fight against discrimination in employment, housing, education and public accommodations.

The **FEDERATION OF RECONSTRUCTIONIST CONGREGATIONS AND HAVUROT** ("FRCH") is the congregational arm of the Jewish Reconstructionist Movement, representing 80 affiliated groups and 50,000 members in North America.

FRCH is on record as having adopted a policy favoring full and equal participation in Jewish and civic life for all gay and lesbian Jews. The Reconstructionist Movement believes that all people are created in the image of God and that the sanctified love between two people is a

right to be enjoyed by everyone in society regardless of the sexual orientation of the parties. Therefore, FRCH endorses the principle of protection for the full and complete rights of all gay and lesbian persons.

The **INTERFAITH IMPACT FOR JUSTICE AND PEACE** ("IIJP") is a 26-year old coalition of Protestant, Catholic, Jewish and Muslim organizations working together on public policy. The 35 faith groups represent national denominations and regional, state and local organizations. The IIJP has a long-standing history of speaking out against discrimination in employment, housing, education and public accommodations. It has actively supported civil rights for gay, lesbian and bisexual individuals. The IIJP has worked at both the national and state levels to ensure the full protection of the law and inclusion in society of gay, lesbian and bisexual individuals. The membership of the IIJP reflects this commitment. From its national member organizations to its individual members to its staff IIJP is an inclusive organization that does not discriminate based on race, gender, disability, religion, sexual orientation, national origin or legal status. IIJP believes that discrimination based on sexual orientation hurts the individuals directly affected and harms the whole of our society.

The **MOST REVEREND EDMOND L. BROWNING, PRESIDING BISHOP OF THE EPISCOPAL CHURCH.** The Episcopal Church is a hierarchical Christian denomination, and a province of the worldwide Anglican Communion that is geographically divided into nearly 120 dioceses in the United States and several nations abroad. Each such diocese is headed by a bishop and contains a number of worshiping congregations, each generally with

its own ordained priest. For example, the Diocese of Colorado has as its leader a bishop, and approximately 108 worshiping congregations.

The chief pastor and executive of The Episcopal Church is its Presiding Bishop, who is elected from among the bishops of the dioceses by the Church's General Convention. The current Presiding Bishop, one of the *amici curiae* in this case, is the Most Reverend Edmond L. Browning, formerly the bishop of the Diocese of Hawaii. The Presiding Bishop, among his other pastoral and administrative duties, often speaks for the Church on matters on which the Church has formally taken a policy position or as to which it is appropriate for the Presiding Bishop to take a leadership role.

The Episcopal Church has long adhered to its conviction that homosexual persons are entitled to equal protection of the laws with all other citizens, and has articulated this position in a series of resolutions adopted by its General Convention, which are cited in this Brief.

The **RECONSTRUCTIONIST RABBINICAL ASSOCIATION** ("RRA") is comprised of over 120 rabbis who are graduates of the Reconstructionist Rabbinical College located in Philadelphia, Pennsylvania. The RRA serves as the professional organization for Reconstructionist Rabbis. The RRA was represented on a joint Reconstructionist Commission that investigated the role of gay and lesbian Jews in the Jewish Community a few years ago. In accordance with its statement in that Commission Report, the RRA affirms the full equality of gay and lesbian people in Jewish social, cultural and religious life. The RRA seeks to prevent discrimination against gay and

lesbian people and to find ways to involve them fully in inclusive and welcoming Reconstructionist Jewish Communities.

The **UNITARIAN UNIVERSALIST ASSOCIATION** is a religious association of more than 1,000 congregations in the United States, Canada and elsewhere. Through its democratic process, the Association adopts resolutions consistent with its fundamental principles and purposes. In particular, the Association has adopted numerous resolutions affirming the principles of separation of church and state, personal religious freedom and the right to privacy. Most relevant to the case at bar is the Association's resolutions (a) opposing discrimination based on sexual orientation or practice and (b) affirming the goal of equality, dignity and respect for all people, regardless of affectional or sexual orientation.

The **UNITED CHURCH OF CHRIST OFFICE FOR CHURCH IN SOCIETY** ("UCC") is a national instrumentality of the United Church of Christ, a denomination of approximately 1.5 million members and 6100 churches, including 71 churches in Colorado. Its predecessor agency, the Council for Christian Social Action, in 1969, declared its opposition to all laws criminalizing consensual homosexual expression in private and urged their repeal. It also called for an end to employment discrimination and other forms of discrimination against homosexuals. In 1975, the United Church of Christ General Synod, the denomination's most representative body, passed a pronouncement calling for federal, state, and local legislation to guarantee civil liberties for all and to forbid discrimination related to sexual preference. To quote from the Pronouncement, "Our Christian faith

requires that we respond to the injustice in our society manifested in the denial and violation of the civil liberties of persons whose affectional or sexual preference is toward persons of the same gender." In 1983, the Executive Council recommended that homosexuality, per se, not be a bar to ordination but that Associations should consider a candidate's total view of human sexuality and its moral expression. Since then the UCC, by vote of Associations across the country, has ordained many gay and lesbian persons for Christian ministry.

For over twenty years many parts of the United Church of Christ have been in the forefront in seeking an end to discrimination against gay and lesbian people. UCC clergy and churches in Colorado were vocal in opposition to Amendment 2, with almost 50 UCC clergy signing an ad in opposition in the *Denver Post*. Throughout its diverse history, from the days when religious vision for a new society led the Mayflower Pilgrims to cross the sea in 1620, UCC has consistently believed that when a society attempts to structure itself so as to refuse by law to offer protection to a group of citizens who face discrimination and abuse, the very purpose of civil society has been violated.

The **UNITED SYNAGOGUE OF CONSERVATIVE JUDAISM** ("USCJ"), established in 1913, is the association of 800 Conservative Jewish congregations with two million members in North America.

In November 1991, USCJ adopted a Resolution affirming Judaism's belief that the divine image reflected by every human being must always be cherished and

affirmed; recognizing that Jews have always been sensitive to the impact of official and unofficial prejudice and discrimination, wherever directed; reiterating that, as are all Jews, gay men and lesbians are welcome as members in its affiliated congregations; and supporting full civil equality for gay and lesbian people in national life.